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#6

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/871,601	06/09/97	WOLFINBARGER	L 152-133P-SHK

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QM31/0827

EXAMINER
JACKSON, S

ART UNIT	PAPER NUMBER
3738	6

DATE MAILED: 08/27/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**Application No.  
**08/871,601**Applicant(s)  
**LLOYD WOLFENBARGER JR.**Examiner  
**Suzette Jackson**Group Art Unit  
**3738**☒ Responsive to communication(s) filed on Jun 9, 1997☐ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 30 days month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims**☒ Claim(s) 1-84 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.☐ Claim(s) \_\_\_\_\_ is/are rejected.☐ Claim(s) \_\_\_\_\_ is/are objected to.☒ Claims 1-84 are subject to restriction or election requirement.**Application Papers**☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119**☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been☐ received.☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)**☐ Notice of References Cited, PTO-892☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_☐ Interview Summary, PTO-413☐ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Election/Restriction*

1. During a telephone conversation with Susanne Hopkins on 28 July 1998 a provisional election was made with out traverse to prosecute the invention of "A Process of cleaning Bone Grafts, claims 1-80. Affirmation of this election must be made by applicant in replying to this Office action. Claims 81-84 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. **However, after further reviewing the claims a different grouping has been established by the examiner. No oral election was selected by Susanne Hopkins on 28 July 1998 regarding the following: Claims 1-64, and 67-69 are the invention of "A process of Cleaning Bone Grafts". Claims 65, 66, and 70-80 are drawn to "a bone graft", and claims 81-84 are drawn to "a holding device".**

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-64, 67-69 are drawn to "the process of cleaning bone grafts", classified in class 128, subclass 898.

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- II. Claims 65, 66, and 70-80 are drawn to "a bone graft", classified in class 623, subclass 16.
- II. Claims 81-84 are drawn to "a holding device", classified in class 269, subclass 86.

3. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as scrubbing or shaking bone grafts with an antiviral, antifungal and antibacterial solution.

4. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another and materially different apparatus such as soaking, agitation and pulsatile water flow for cleaning. The holding device may also be used to store centrifugal tubes for the process of separating liquid compounds.

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5. Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as storing centrifugal tube for the process of separating chemical compounds. See MPEP § 806.05(d).

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. Because these inventions are distinct for the reasons given above and the searches required for the three inventions are divergent, restriction for examination purposes as indicated is proper.


8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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9. Any inquiry concerning this communication or earlier communication regarding this application should be directed to examiner Suzette Jackson at (703) 308-6516. If you are unable to reach me, please contact my supervisor, Mickey Yu, at (703) 308-2672. In a case requiring immediate assistance, please call (703) 308-0858 to reach the main operator for Sector 3700.



SJJ  
18 August 1998



David H. Willse  
Primary Examiner